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Attorney for Defendants Township of Hamilton and Hamilton Township Police Officers

Sgt. Nicole Nelson, Cory Silvio, William Howze, Servando Pahang and Sgt. Michael

Schnurr

File No. 8134-TBR

<p>NICO A. TERRUSO-CRESPO, as the Administrator of the ESTATE OF MARIO P. TERRUSO, JR., deceased,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ATLANTIC COUNTY JUSTICE FACILITY, ET AL.,</p> <p style="text-align: right;">Defendants</p>	<p>UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE</p> <p>CASE NO.: 1:21-CV-15288-NLH-SAK</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;">ANSWER TO SECOND AMENDED COMPLAINT, SEPARATE DEFENSES, CROSSCLAIMS AND JURY DEMAND ON BEHALF OF DEFENDANTS TOWNSHIP OF HAMILTON AND HAMILTON TOWNSHIP POLICE OFFICERS SGT. NICOLE NELSON, CORY SILVIO, WILLIAM HOWZE, SERVANDO PAHANG AND SGT. MICHAEL SCHNURR</p>
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Defendants Township of Hamilton and Hamilton Township Police Officers Sgt.
Nicole Nelson, Cory Silvio, William Howze, Servando Pahang and Sgt Michael Schnurr,
by way of Answer to the Second Amended Complaint of Plaintiff above, state:

PRELIMINARY STATEMENT

1. Denied that answering Defendants are liable to Plaintiff.

JURISDICTION AND VENUE

2. Neither admitted nor denied and Plaintiff is left to his proofs.
3. Neither admitted nor denied and Plaintiff is left to his proofs.
4. Denied that answering Defendants are liable to Plaintiff.

THE PARTIES

5. Neither admitted nor denied and Plaintiff is left to his proofs.
6. Neither admitted nor denied and Plaintiff is left to his proofs.
7. Neither admitted nor denied and Plaintiff is left to his proofs.
8. Neither admitted nor denied and Plaintiff is left to his proofs.
9. Neither admitted nor denied and Plaintiff is left to his proofs.
10. Neither admitted nor denied and Plaintiff is left to his proofs.
11. Neither admitted nor denied and Plaintiff is left to his proofs.
12. Admitted.
13. Admitted.
14. Neither admitted nor denied and Plaintiff is left to his proofs.
15. Neither admitted nor denied and Plaintiff is left to his proofs.
16. Neither admitted nor denied and Plaintiff is left to his proofs.
17. Neither admitted nor denied and Plaintiff is left to his proofs.
18. Neither admitted nor denied and Plaintiff is left to his proofs.
19. Neither admitted nor denied and Plaintiff is left to his proofs.
20. Neither admitted nor denied and Plaintiff is left to his proofs.
21. Neither admitted nor denied and Plaintiff is left to his proofs.
22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Neither admitted nor denied and Plaintiff is left to his proofs.

29. Neither admitted nor denied and Plaintiff is left to his proofs.

30. Neither admitted nor denied and Plaintiff is left to his proofs.

31. Neither admitted nor denied and Plaintiff is left to his proofs.

32. Neither admitted nor denied and Plaintiff is left to his proofs.

33. Neither admitted nor denied and Plaintiff is left to his proofs.

34. Neither admitted nor denied and Plaintiff is left to his proofs.

35. Neither admitted nor denied and Plaintiff is left to his proofs.

36. Neither admitted nor denied and Plaintiff is left to his proofs.

37. Neither admitted nor denied and Plaintiff is left to his proofs.

38. Neither admitted nor denied and Plaintiff is left to his proofs.

39. Neither admitted nor denied and Plaintiff is left to his proofs.

40. Neither admitted nor denied and Plaintiff is left to his proofs.

41. Neither admitted nor denied and Plaintiff is left to his proofs.

FACTUAL ALLEGATIONS

40. (sic) Denied.

41. Admitted.

42. Denied.

43. Admitted.

44. Neither admitted nor denied and Plaintiff is left to his proofs.

45. Admitted.

46. Neither admitted nor denied and Plaintiff is left to his proofs.

47. Neither admitted nor denied and Plaintiff is left to his proofs.

48. Neither admitted nor denied and Plaintiff is left to his proofs.

49. Denied.

50. Neither admitted nor denied and Plaintiff is left to his proofs.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Neither admitted nor denied and Plaintiff is left to his proofs.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

FIRST COUNT

86. (sic) Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Neither admitted nor denied and Plaintiff is left to his proofs.

101. Denied.

102. Denied.

103. Denied that these answering Defendants are liable to Plaintiff.

SECOND COUNT

104. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

THIRD COUNT

109. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

110. Denied.

111. Denied.

112. Denied.

FOURTH COUNT

113. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

114. Denied.

115. Denied.

116. Denied.

FIFTH COUNT

117. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

118. Denied.

119. Denied.

120. Denied that these answering defendants violated a duty of care to Plaintiff's decedent.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

SIXTH COUNT

126. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

127. Denied.

128. Denied.

129. Denied.

SEVENTH COUNT

130. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

131. Denied.

132. Denied.

133. Denied.

EIGHTH COUNT

134. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

135. Neither admitted nor denied and Plaintiff is left to his proofs.

136. Admitted.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

NINTH COUNT

142. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

143. Admitted.

144. Admitted.

145. Denied.

146. Denied.

147. Denied.

TENTH COUNT

148. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

ELEVENTH COUNT

157. These answering Defendants repeat their responses to the

above paragraphs and incorporate same by reference as if set forth at length herein.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

TWELFTH COUNT

166. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

167. Denied.

168. Denied.

THIRTEENTH COUNT

169. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

FOURTEENTH COUNT

174. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

175. Denied.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

FIFTEENTH COUNT

182. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

183. Neither admitted nor denied and Plaintiff is left to his proofs.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

192. Denied.

SIXTEENTH COUNT

193. These answering Defendants repeat their responses to the above paragraphs and incorporate same by reference as if set forth at length herein.

194. Neither admitted nor denied and Plaintiff is left to his proofs.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

WHEREFORE, Defendants Township of Hamilton and Hamilton Township Police Officers Sgt. Nicole Nelson, Cory Silvio, William Howze, Servando Pahang and Sgt. Michael Schnurr demand Judgment dismissing the Complaint, with prejudice, together with fees and costs of suit.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The answering Defendants hereby raise the pertinent Statute of Limitations defenses.

SECOND SEPARATE DEFENSE

The answering Defendants hereby raise all defenses available under the Affidavit of Merit of Statue. N.J.S.A. 2A:53-26, et seq.

THIRD SEPARATE DEFENSE

The answering Defendants specifically deny negligence.

FOURTH SEPARATE DEFENSE

The answering Defendants performed each and every duty owed to the plaintiff.

FIFTH SEPARATE DEFENSE

The answering Defendants deny Plaintiff's claims of proximate causation.

SIXTH SEPARATE DEFENSE

The losses and injuries alleged to have been sustained by plaintiff were caused by sole negligence of the plaintiff.

SEVENTH SEPARATE DEFENSE

The losses and injuries alleged to have been sustained by plaintiff were caused by the acts of others than the answering defendants and the defendants hereby plead the Comparative Negligence Act of the State of New Jersey. N.J.S.A. 2A:15-1, et seq.

EIGHTH SEPARATE DEFENSE

The losses and injuries alleged by Plaintiff were caused by and arose out of risks of which the plaintiff had full knowledge and had assumed.

NINTH SEPARATE DEFENSE

The answering defendants fulfilled all duties and obligations to properly inform the patient of all potential risks and complications.

TENTH SEPARATE DEFENSE

The negligence, if any, was that of others over whom the answering defendants owed no duty and to whom these answering defendants exercised no control.

ELEVENTH SEPARATE DEFENSE

The Plaintiff has failed to state a cause of action upon which relief may be granted.

TWELFTH SEPARATE DEFENSE

The answering Defendants asserts that plaintiff's alleged losses and injuries are the result of an act by an independent intervening agency or instrumentality over which the answering Defendants had no power or control.

THIRTEENTH SEPARATE DEFENSE

To the extent that it may be applicable, plaintiff's complaint is barred by laches.

FOURTEENTH SEPARATE DEFENSE

To the extent that it may be applicable, Defendants raise the affirmative defense of *res judicata*.

FIFTEENTH SEPARATE DEFENSE

The proximate cause of the alleged injuries was the existing and pre-existing physical condition of the Plaintiff.

SIXTEENTH SEPARATE DEFENSE

To the extent applicable, Plaintiff's Complaint is barred or limited by lack of personal and/or subject matter jurisdiction.

SEVENTEENTH SEPARATE DEFENSE

To the extent applicable, Plaintiff's claims are barred or limited by the entire controversy doctrine.

EIGHTEENTH SEPARATE DEFENSE

To the extent applicable, Plaintiff's claim is barred by the provisions of the New Jersey Tort Claims Act.

NINETEENTH SEPARATE DEFENSE

To the extent applicable, Plaintiff's claim is barred and/or limited by the New Jersey Wrongful Death Act, N.J.S. A. 2A:3.1 et seq.

TWENTIETH SEPARATE DEFENSE

To the extent applicable, defendant (s) raises all defenses under the New Jersey Property-Liability Insurance Guaranty Association Act. N.J.S. A. 2A:15-97.

TWENTY FIRST SEPARATE DEFENSE

To the extent applicable, defendants are entitled to a credit for any and all medical bills or other benefits for which plaintiff either received or is entitled to received benefits from any collateral source pursuant to N.J.S. A. 2A:15-97.

TWENTY SECOND SEPARATE DEFENSE

The answering Defendants are not liable to the Plaintiff in that there is no liability upon any public employees pursuant to the provisions of N.J.S. A. 59:2-2(b).

TWENTY THIRD SEPARATE DEFENSE

The answering Defendants are immune from liability pursuant to the provisions of N.J.S. A. 59:3-1, et. seq.

TWENTY FOURTH SEPARATE DEFENSE

The answering Defendants assert the applicability of the provisions of N.J.S. A. 59:2-3 through 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

TWENTY FIFTH SEPARATE DEFENSE

The answering Defendants asserts the applicability of the provisions of N.J.S.A. 59:8-3 through 59:8-7 regarding failure to provide adequate and timely notice of claim.

TWENTY SIXTH SEPARATE DEFENSE

The answering Defendants assert the applicability of the provisions of N.J.S.A. 59:8-8 through 59:8-11 regarding failure to timely file a notice of claim and/or failure to file a notice of claim as set forth therein.

TWENTY SEVENTH SEPARATE DEFENSE

Any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accordance with the judgments, damages and interest provided in N.J.S.A. 59:9-2.

TWENTY EIGHTH SEPARATE DEFENSE

The answering Defendants assert the applicability of N.J.S.A. 59:9-3 and 59:9-4 regarding joint tortfeasors and the comparative negligence of the Plaintiff.

TWENTY NINTH SEPARATE DEFENSE

The answering Defendants, by pressing the aforementioned defense(s), do not intend to limit their defenses and/or rights under the Act, and hereby affirmatively plead the procedural and substantive provisions of the New Jersey Tort Claims Act [N.J.S.A. 59:1-1, et. seq.] which provisions are applicable and have not been previously cited in this Answer.

THIRTIETH SEPARATE DEFENSE

The answering Defendants did not act with malice but did act in good faith, therefore, the Plaintiff is not entitled to damages.

THIRTY FIRST SEPARATE DEFENSE

The answering Defendants assert that the actions taken by the answering Defendants were subject to immunity, qualified or partial immunity and/or authorized by law.

THIRTY SECOND SEPARATE DEFENSE

The answering Defendants assert that the actions taken by the answering Defendants were subject to absolute and/or qualified immunity under U.S. Constitutional and New Jersey Constitutional Law. The answering Defendants assert that the Plaintiff has failed to plead any constitutional violations with such specificity as to state a cognizable claim under 42 U.S.C.A. §1983 or N.J.S.A. 10:6-2.

THIRTY THIRD SEPARATE DEFENSE

Defendants are immune from claims for Punitive Damages under State and Federal Constitutional, Statutory, and Case Law, and Plaintiff has failed to state a cause of Action to warrant recovery of Punitive Damages.

THIRTY FOURTH SEPARATE DEFENSE

The answering Defendants assert that the Plaintiff's Fourteenth Amendment claims must be dismissed as a matter of law because claims made against law enforcement Officers alleging excessive use of force are properly analyzed under the Fourth Amendment. Plaintiff was not denied procedural or substantive due process or equal protection under the law.

THIRTY FIFTH SEPARATE DEFENSE

Defendants hereby reserve the right to amend the Answer to assert additional separate defenses as revealed or suggested by the completion of ongoing investigation and discovery. The answering defendants deny each and every allegation of any and all Cross-Claims, which may have been or may be asserted against defendants.

CROSS CLAIMS

These answering Defendants Township of Hamilton and Hamilton Township

Police Officers Sgt. Nicole Nelson, Cory Silvio, William Howze, Servando Pahang and Sgt. Michael Schnurr, hereby assert cross-claims against co-defendants for indemnification and or contribution under applicable statutes, caselaw and federal rules.

JURY TRIAL DEMAND

Defendants Township of Hamilton and Hamilton Township Police Officers Sgt. Nicole Nelson, Cory Silvio, William Howze, Servando Pahang and Sgt. Michael Schnurr, hereby demand Trial by jury as to all issues.

REYNOLDS & HORN, P.C.

By: /s/ Thomas B. Reynolds
THOMAS B. REYNOLDS, ESQUIRE

Attorney for Defendants Township of
Hamilton and Hamilton Township Police
Officers Sgt. Nicole Nelson, Cory Silvio,
William Howze, Servando Pahang and
Sgt. Michael Schnurr

DATED: July 26, 2023